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BROWN Plaintiff in Error, *versus* BARRY.

**E**RROR from the Circuit Court for the District of *Virginia*. An action of debt had been instituted in the Circuit Court by *James Barry*, a citizen of *Maryland*, against *James Brown*, a citizen of *Virginia*; in which the declaration sets forth, that the Plaintiff by his attorney, "complains of *James Brown*, &c. of a plea that he render to him the sum of £770. sterling money of *Great Britain*, with interest thereon at the rate of 10 per cent per annum, from the 11th of *February* 1793, which to him he owes, and from him unjustly detains: For that whereas the said Defendant, on the 11th of *February* 1793, at *Virginia* aforesaid, according to the custom of merchants, did make his first bill of exchange to the court now here shewn, bearing date the said 11th of *February* 1793, signed with his name, by his proper hand subscribed, and directed to Messrs. *Donald & Burton*, whereby he requested the said *Donald & Burton* at 60 days sight of that his first of exchange (his second and third not paid) to pay to the order of Mr. *Hector Kennedy*, £770. sterling, for value in current money here received, (that is to say at *Virginia* aforesaid) and to place the same to the account of him the said *James Brown*." The declaration then proceeds to set forth, in the usual form, successive indorsements by *H. Kennedy* to *Joseph Hadfield*, by *Joseph Hadfield* to *Richard Muilman & Co.* and by *Richard Muilman & Co.* (on the 26th of *June* 1793) to *James Barry*, the present Plaintiff; and a protest for non-payment on the 21st of *June* 1793. After averring that none of the bills of the set had been paid, it concludes, "whereby and by force of the act of the General Assembly of the Commonwealth of *Virginia*, in that case made and provided, action accrued to the said Plaintiff, to demand and have of the said Defendant, the aforesaid sum, &c. &c."

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To this declaration there was a plea of *nil debit*, issue was thereupon joined, and, after a trial, the jury found a special verdict in the following words:—"We of the jury find, that the consideration given for the bill of exchange in the declaration mentioned, was the undertaking of *Andrew Clow & Co.* a party interested in receiving the same, to deliver to *James Brown*, the drawer thereof, other bills of exchange, in sterling money to the same amount: If the court shall be of opinion that the consideration above mentioned, did not come within the operation of the 4th section of the act of Assembly of the 28. Geo. 2. c. 2. entitled 'an act to amend an act entitled, an act declaring the law concerning executions, and for the relief of insolvent debtors, and for other purposes therein mentioned,' then we find for the Plaintiff, 4,404 42-100 dollars damages;—if otherwise, we find for the Plaintiff 3,303 82-100 dollars damages." To the special verdict, this memorandum was added: "And it is agreed by the parties, that if in the opinion of the court, the Plaintiff could not legally give parol testimony to prove that the bill in the declaration mentioned, was in fact, drawn for other consideration than current money, the verdict shall be changed from the greater to the less sum found in the said verdict."

The case was first argued in the Circuit Court, on a motion made by the Defendant to arrest the judgment, for the following reasons:—"1st, Because the declaration aforesaid demands foreign money, without stating the value thereof in the current money of the *United States of America*, or of the Commonwealth of *Virginia*. 2d, Because the said declaration does not charge that the bill of exchange therein mentioned was protested for non-acceptance; neither doth it charge, that the said bill was presented to the persons on whom it was drawn for acceptance, or that they ever were required to accept it. 3d, Because the said action is founded on an act of Assembly, which was not in force, at the time when the bill of exchange mentioned in the declaration was drawn." But these objections having been over-ruled, the law arising on the special verdict was argued, and ADJUDGED to be in favour of the Plaintiff; whereupon judgment was rendered for the sum of 4404 42-100 dollars, with interest at 5 per cent from the day of rendering the judgment, and costs.

From the judgment of the Circuit Court, the present writ of error was brought, a variety of exceptions were taken to the record, and after argument by *Lee*, Attorney General, for the Plaintiff in error, and by *E. Tilghman*, for the Defendant, the opinion of THE COURT was delivered by THE CHIEF JUSTICE, in the following terms.

ELSWORTH,

ELSWORTH, *Chief Justice.* In delivering the opinion of 1797.  
the court, I shall briefly consider the exceptions to the record, in the order in which they have been proposed at the bar.

1. The *first* exception states, that the act of the Legislature of *Virginia*, passed in the year, 1748, on which the action is founded, as an action of debt, was not in force, when the bill of exchange was drawn, to wit, on the 11th of *February* 1793. The question is, whether two subsequent acts of the Legislature of that State, passed at a session in 1792 (namely, one of *November*, declaring the repeal of the act of 1748, and another of *December*, declaring a suspension of that repeal till *October* 1793) did in fact, repeal, and leave repealed, the said act of 1748? This, it is contended, must have been their effect, as ascertained and limited by two other statutes, namely, one of 1789, declaring, that the repeal of a repealing act shall not revive the act first repealed; the other of 1783, declaring, that statutes should take effect from the day, on which they in fact passed, unless another day was named. It must be taken, however, that the act of 1748, remained in force; and *that*, until after the bill was drawn, for the following reasons: 1. The act, suspending the repealing act of *November* 1792, is not within the act of 1789, which declares, that the repeal of a repealing act shall not revive the act first repealed. The suspension of an act for a limited time, is not a repeal of it: And the act of 1789, being in derogation of the common law, is to be taken strictly. 2. The repealing act, and the act suspending it, acts of the same session, are, according to the *British* construction of statutes, and the rule, which appears to have prevailed in *Virginia*, parts of the same act, and have effect from the same day: and, taken together as parts of the same act, they only amount to a provision, that a repeal of the act of 1748, should take place at a day then future. The act of 1785, declaring the commencement of acts to be from the day, on which they in fact pass, does not apply here; for, by the third section of the act of 1789, it is provided, that when a question shall arise, whether a law passed during any session changes, or repeals, a former law during the same session, which is the present case, the same construction shall be made, as if the act of 1785, had never been passed, that is, both acts being of the same session, shall have the same commencement, on the first day of the session. 3. The manifest intent of the suspending act was, that the act, repealed by the repealing act, should continue in force till a day then future, the first of *October*, 1793. It could have had no other intent. And the intention of the Legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding. Thus,  
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the act of 1748, clearly was in force when the bill was drawn.

II. The *second* exception states, that there is no averment of a protest for non-acceptance of the bills.

This exception is invalid on two grounds. 1. It does not appear, that the bill was not accepted, so that there could have been such protest; and, if accepted, it would have been immaterial for the Plaintiff to shew, that it was so, as his right of action could in no measure depend on that fact. The silence of the declaration as to the question, whether the bill was accepted or not, does not vitiate it; the action being on a protest for non-payment. 2. As to bills drawn in the *United States* and payable in Europe, of which this is one; the custom of merchants in this country does not ordinarily require, to recover on a protest for non-payment, that a protest for non-acceptance should be produced, though the bills were not accepted. I say the custom of merchants in this country; for the custom of merchants somewhat varies in different countries, in order to accommodate itself to particular courses of business, or other local circumstances.

III. The third exception states, that the judgment is for too large a sum, the bill having been taken for sterling, when, by the act of 1775, it ought to have been taken for current money of *Virginia*. That act requires, that if the consideration of a bill be a pre-existing currency debt, or be current money paid at the time of the draft, the bill shall express the amount of the debt, or currency paid, which was the real consideration. And that on failure so to do, the bill, though it may be expressed for sterling, as in this case, shall be taken to be for current money. The bill is thus expressed, "For value received in 'current money;'" but it does not say how much. The jury, however, have, by their special verdict, ascertained, that the real consideration of the bill was an engagement to draw other sterling bills. Now it is clear, that the consideration in fact, though variant from the face of a bill, is regarded by the act, and must be sought for, to give the act effect. Upon inquiry the jury have found the consideration to be such as to take the case out of the statute. In this bill then, the words added to value received, viz. "in current money," were immaterial and without effect: And, therefore, the words in the declaration, as descriptive of the bills, might be disregarded by the jury and the court.

IV. The *fourth* exception states, that the action is for foreign money, and its value is not averred. The verdict cures this. The jury have found the value, their verdict being in dollars. The value of sterling money, here sued for, had been long ascertained in *Virginia* by statute, and was certain enough.

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V. The *fifth* exception states, that the declaration is in the *debet*, as well as the *detinet*, though for foreign money. 1797.

The reason of the rule, that *debet* for foreign money is ill, is the uncertainty of its value; and, therefore, both the answers given to the fourth, apply to this present, exception.

Let the judgment of the Circuit Court be affirmed.

EMORY *versus* GRENOUGH.

**E**RROR from the Circuit Court for the District of *Massachusetts*.

The Plaintiff in error was a native of *Massachusetts*, formerly resident in *Boston*, where he contracted the debt in question to the Defendant in error, who was, also a native, and had always continued a resident, of that state. Some years afterwards the Plaintiff in error removed into *Pennsylvania*, became a resident citizen of the state, took the benefit of her bankrupt law (which, in its terms and operation, was analogous to the bankrupt laws of England) and duly obtained a certificate of conformity from the commissioners. Subsequent to this discharge, he returned, on a transient visit, to *Boston*; and, being there arrested by the Defendant in error, for the old debt, he caused the suit to be removed from the State into the Circuit Court, and pleaded his certificate in bar to the action: but the court (consisting of Judge IREDELL, and the District Judge) over-ruled the plea, and gave judgment for the Plaintiff below: whereupon the present writ of error was brought.\*

The argument of the cause had been considerably advanced, when a contagious fever made its appearance again in *Philadelphia*, and the business of the court was unavoidably suspended. But at *February* Term, 1797, the court having decided,

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\* It appeared, during the discussion, that a great diversity existed in the law and practice of the several States, upon this subject; and that a decision, directly contrary to that of the Circuit Court of *Massachusetts*, had been given in the Circuit Court of *Rhode Island*, composed of Judge *Wilson* and the District Judge.